

the officer before whom the deposition was taken. Thereafter, the officer shall seal the deposition, with copies thereof, in an envelope and mail the same by registered or certified mail to the administrative law judge.

(2) Subject to such objections to the questions and answers as were noted at the time of taking the deposition, and to the provisions in §1955.40(b)(1), any part or all of a deposition may be offered into evidence by the party taking it as against any party who was present, represented at the taking of the deposition, or who had due notice thereof.

(d) Whenever appropriate to a just disposition of any issue in the proceeding the administrative law judge may allow discovery by any other appropriate procedure, such as by interrogatories upon a party or request for production of documents by a party.

(e) Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the administrative law judge may make any order which justice requires to limit or condition discovery in order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

#### **§ 1955.33 Sanctions for failure to comply with orders.**

(a) If a party or an official or agent of a party fails, without good cause, to comply with an order including, but not limited to, an order for the taking of a deposition, written interrogatories, the production of documents, or an order to comply with a subpoena, the administrative law judge or the Secretary or both, for the purpose of permitting resolution of relevant issues and disposition of the proceeding without unnecessary delay despite such failure, may take such action as is just, including but not limited to the following:

(1) Infer that the admission, testimony, documents, or other evidence would have been adverse to the party;

(2) Rule that for the purposes of the proceeding, the matter or matters concerning which the order or subpoena was issued be taken as established adversely to the party;

(3) Rule that the party may not introduce into evidence or otherwise rely, in support of any claim or defense, upon testimony by such party, officer or agent, or the documents or other evidence;

(4) Rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(5) Rule that a pleading, or part of a pleading, on a motion or other submission by the party, concerning which the order or subpoena was issued, be stricken or that decision on the pleading be rendered against the party, or both.

(b) Any such action may be taken by written or oral order issued in the course of the proceeding or by inclusion in the initial decision of the administrative law judge or an order or opinion of the Secretary. The parties may seek, and the administrative law judge may grant, such of the foregoing means of relief or other appropriate relief as may be sufficient to compensate for the lack of withheld testimony, documents, or other evidence.

#### **§ 1955.34 Fees of witnesses.**

Witnesses, including witnesses for depositions, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears, and the person taking a deposition shall be paid by the party at whose instance the deposition is taken.

### **Subpart E—Hearing and Decision**

#### **§ 1955.40 Hearings.**

(a)(1) Except as may be ordered otherwise by the administrative law judge, the Department of Labor shall proceed first at the hearing.

(2) The Department of Labor shall have the burden of proof to sustain the contentions alleged in the notice of proposed withdrawal, published under §1955.10(b)(1) but the proponent of any factual proposition shall be required to sustain the burden of proof with respect thereto.